

AMENDED IN ASSEMBLY JUNE 23, 2009

AMENDED IN SENATE APRIL 2, 2009

**SENATE BILL**

**No. 483**

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**Introduced by Senator Corbett**

February 26, 2009

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An act to amend Section ~~2923.5 of the Civil Code~~ 2924.8 of the Civil Code, and to amend Section 1161b of the Code of Civil Procedure, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as amended, Corbett. Mortgages: foreclosure.

*Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to post a notice of sale, as specified. Existing law also requires that the notice of sale in the case of default be mailed to the resident of the property and posted on the property, as specified. It is an infraction to tear down the notice within 72 hours of posting.*

*Existing law also requires that a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure shall be given 60 days' written notice to quit, as specified, before the tenant or subtenant may be removed from the property, as specified.*

*This bill would revise the content of the notice described above that is required to be posted on the property. The bill would also revise the latter provision to provide that a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure shall be given 60 days' written notice to quit, as specified, or 90 days if required by any other provision of state or federal law, before the tenant or subtenant may be removed from the property, as specified.*

Upon a breach of the obligation of a mortgage or transfer of an interest in property, in order to exercise a power of sale, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default. Existing law prohibits filing the notice of default until 30 days after certain actions are taken, except in certain instances, including when the borrower has filed for bankruptcy and the proceedings are not finalized.

This bill would revise this bankruptcy exception described above, to provide instead that a notice of default may be filed without waiting 30 days when the borrower has filed a case under specified federal provisions relating to bankruptcy and that the bankruptcy court has not entered an order closing or dismissing the bankruptcy case or granting relief from a stay of foreclosure.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 2924.8 of the Civil Code is amended to  
2     read:  
3     2924.8. (a) Upon posting a notice of sale pursuant to Section  
4     2924f, a trustee or authorized agent shall also post the following  
5     notice, in the manner required for posting the notice of sale on the  
6     property to be sold, and a mortgagee, trustee, beneficiary, or  
7     authorized agent shall mail, at the same time in an envelope  
8     addressed to the “Resident of property subject to foreclosure sale”  
9     the following notice in English and the languages described in  
10    Section 1632: “Foreclosure process has begun on this property,  
11    which may affect your right to continue to live in this property.  
12    Twenty days or more after the date of this notice, this property  
13    may be sold at foreclosure. If you are renting this property, the  
14    new property owner may either give you a new lease or rental  
15    agreement or provide you with a 60-day eviction notice. However,  
16    other laws may prohibit an eviction in this circumstance or provide  
17    you with a longer notice before eviction. You may wish to contact  
18    a lawyer or your local legal aid or housing counseling agency to  
19    discuss any rights you may have.” “You are not required to move  
20    at this time. However, the foreclosure process has begun on this  
21    property, which may affect your right to continue to live in this

property in the future. Twenty days or more after the date of this notice, this property may be sold at foreclosure. If you are renting this property, your tenancy may continue after the foreclosure sale. In order for the new owner to evict you, the new owner must provide you with a written eviction notice. However, some laws may prohibit an eviction. You should contact a lawyer or your local legal aid or housing counseling agency to discuss any rights you may have.”

(b) It shall be an infraction to tear down the notice described in subdivision (a) within 72 hours of posting. Violators shall be subject to a fine of one hundred dollars (\$100).

(c) A state government entity shall make available translations of the notice described in subdivision (a) which may be used by a mortgagee, trustee, beneficiary, or authorized agent to satisfy the requirements of this section.

(d) This section shall only apply to loans secured by residential real property, and if the billing address for the mortgage note is different than the property address.

(e) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

SEC. 2. Section 1161b of the Code of Civil Procedure is amended to read:

1161b. (a) Notwithstanding Section 1161a, a tenant or subtenant in possession of a rental housing unit at the time the property is sold in foreclosure shall be given 60 days’ written notice to quit pursuant to Section 1162, or 90 days if required by any other provision of state or federal law, before the tenant or subtenant may be removed from the property as prescribed in this chapter.

(b) This section shall not apply if any party to the note remains in the property as a tenant, subtenant, or occupant.

(c) This section shall remain in effect only until January 1, 2013, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2013, deletes or extends that date.

~~SECTION 1. Section 2923.5 of the Civil Code is amended to read:~~

~~2923.5. (a) (1) A mortgagee, trustee, beneficiary, or authorized agent may not file a notice of default pursuant to Section 2924 until 30 days after contact is made as required by paragraph (2) or~~

1 30 days after satisfying the due diligence requirements as described  
2 in subdivision (g):

3 ~~(2) A mortgagee, beneficiary, or authorized agent shall contact~~  
4 ~~the borrower in person or by telephone in order to assess the~~  
5 ~~borrower's financial situation and explore options for the borrower~~  
6 ~~to avoid foreclosure. During the initial contact, the mortgagee,~~  
7 ~~beneficiary, or authorized agent shall advise the borrower that he~~  
8 ~~or she has the right to request a subsequent meeting and, if~~  
9 ~~requested, the mortgagee, beneficiary, or authorized agent shall~~  
10 ~~schedule the meeting to occur within 14 days. The assessment of~~  
11 ~~the borrower's financial situation and discussion of options may~~  
12 ~~occur during the first contact, or at the subsequent meeting~~  
13 ~~scheduled for that purpose. In either case, the borrower shall be~~  
14 ~~provided the toll-free telephone number made available by the~~  
15 ~~United States Department of Housing and Urban Development~~  
16 ~~(HUD) to find a HUD-certified housing counseling agency. Any~~  
17 ~~meeting may occur telephonically.~~

18 ~~(b) A notice of default filed pursuant to Section 2924 shall~~  
19 ~~include a declaration from the mortgagee, beneficiary, or authorized~~  
20 ~~agent that it has contacted the borrower, tried with due diligence~~  
21 ~~to contact the borrower as required by this section, or the borrower~~  
22 ~~has surrendered the property to the mortgagee, trustee, beneficiary,~~  
23 ~~or authorized agent.~~

24 ~~(c) If a mortgagee, trustee, beneficiary, or authorized agent had~~  
25 ~~already filed the notice of default prior to the enactment of this~~  
26 ~~section and did not subsequently file a notice of rescission, then~~  
27 ~~the mortgagee, trustee, beneficiary, or authorized agent shall, as~~  
28 ~~part of the notice of sale filed pursuant to Section 2924f, include~~  
29 ~~a declaration that either:~~

30 ~~(1) States that the borrower was contacted to assess the~~  
31 ~~borrower's financial situation and to explore options for the~~  
32 ~~borrower to avoid foreclosure.~~

33 ~~(2) Lists the efforts made, if any, to contact the borrower in the~~  
34 ~~event no contact was made.~~

35 ~~(d) A mortgagee's, beneficiary's, or authorized agent's loss~~  
36 ~~mitigation personnel may participate by telephone during any~~  
37 ~~contact required by this section.~~

38 ~~(e) For purposes of this section, a "borrower" shall include a~~  
39 ~~mortgagor or trustor.~~

1     ~~(f) A borrower may designate a HUD-certified housing~~  
2     ~~counseling agency, attorney, or other advisor to discuss with the~~  
3     ~~mortgagee, beneficiary, or authorized agent, on the borrower's~~  
4     ~~behalf, options for the borrower to avoid foreclosure. That contact~~  
5     ~~made at the direction of the borrower shall satisfy the contact~~  
6     ~~requirements of paragraph (2) of subdivision (a). Any loan~~  
7     ~~modification or workout plan offered at the meeting by the~~  
8     ~~mortgagee, beneficiary, or authorized agent is subject to approval~~  
9     ~~by the borrower.~~

10    ~~(g) A notice of default may be filed pursuant to Section 2924~~  
11    ~~when a mortgagee, beneficiary, or authorized agent has not~~  
12    ~~contacted a borrower as required by paragraph (2) of subdivision~~  
13    ~~(a) provided that the failure to contact the borrower occurred~~  
14    ~~despite the due diligence of the mortgagee, beneficiary, or~~  
15    ~~authorized agent. For purposes of this section, "due diligence"~~  
16    ~~shall require and mean all of the following:~~

17    ~~(1) A mortgagee, beneficiary, or authorized agent shall first~~  
18    ~~attempt to contact a borrower by sending a first-class letter that~~  
19    ~~includes the toll-free telephone number made available by HUD~~  
20    ~~to find a HUD-certified housing counseling agency.~~

21    ~~(2) (A) After the letter has been sent, the mortgagee,~~  
22    ~~beneficiary, or authorized agent shall attempt to contact the~~  
23    ~~borrower by telephone at least three times at different hours and~~  
24    ~~on different days. Telephone calls shall be made to the primary~~  
25    ~~telephone number on file.~~

26    ~~(B) A mortgagee, beneficiary, or authorized agent may attempt~~  
27    ~~to contact a borrower using an automated system to dial borrowers,~~  
28    ~~provided that, if the telephone call is answered, the call is~~  
29    ~~connected to a live representative of the mortgagee, beneficiary,~~  
30    ~~or authorized agent.~~

31    ~~(C) A mortgagee, beneficiary, or authorized agent satisfies the~~  
32    ~~telephone contact requirements of this paragraph if it determines,~~  
33    ~~after attempting contact pursuant to this paragraph, that the~~  
34    ~~borrower's primary telephone number and secondary telephone~~  
35    ~~number or numbers on file, if any, have been disconnected.~~

36    ~~(3) If the borrower does not respond within two weeks after the~~  
37    ~~telephone call requirements of paragraph (2) have been satisfied,~~  
38    ~~the mortgagee, beneficiary, or authorized agent shall then send a~~  
39    ~~certified letter, with return receipt requested.~~

1     ~~(4) The mortgagee, beneficiary, or authorized agent shall provide~~  
2     ~~a means for the borrower to contact it in a timely manner, including~~  
3     ~~a toll-free telephone number that will provide access to a live~~  
4     ~~representative during business hours.~~

5     ~~(5) The mortgagee, beneficiary, or authorized agent has posted~~  
6     ~~a prominent link on the homepage of its Internet Web site, if any,~~  
7     ~~to the following information:~~

8     ~~(A) Options that may be available to borrowers who are unable~~  
9     ~~to afford their mortgage payments and who wish to avoid~~  
10    ~~foreclosure, and instructions to borrowers advising them on steps~~  
11    ~~to take to explore those options.~~

12    ~~(B) A list of financial documents borrowers should collect and~~  
13    ~~be prepared to present to the mortgagee, beneficiary, or authorized~~  
14    ~~agent when discussing options for avoiding foreclosure.~~

15    ~~(C) A toll-free telephone number for borrowers who wish to~~  
16    ~~discuss options for avoiding foreclosure with their mortgagee,~~  
17    ~~beneficiary, or authorized agent.~~

18    ~~(D) The toll-free telephone number made available by HUD to~~  
19    ~~find a HUD-certified housing counseling agency.~~

20    ~~(h) Subdivisions (a), (c), and (g) shall not apply if any of the~~  
21    ~~following occurs:~~

22    ~~(1) The borrower has surrendered the property as evidenced by~~  
23    ~~either a letter confirming the surrender or delivery of the keys to~~  
24    ~~the property to the mortgagee, trustee, beneficiary, or authorized~~  
25    ~~agent.~~

26    ~~(2) The borrower has contracted with an organization, person,~~  
27    ~~or entity whose primary business is advising people who have~~  
28    ~~decided to leave their homes on how to extend the foreclosure~~  
29    ~~process and avoid their contractual obligations to mortgagees or~~  
30    ~~beneficiaries.~~

31    ~~(3) A case has been filed by the borrower under Chapter 7, 11,~~  
32    ~~12, or 13 of Title 11 of the United States Code, and the bankruptcy~~  
33    ~~court has not entered an order closing or dismissing the bankruptcy~~  
34    ~~case or granting relief from a stay of foreclosure.~~

35    ~~(i) This section shall apply only to loans made from January 1,~~  
36    ~~2003, to December 31, 2007, inclusive, that are secured by~~  
37    ~~residential real property and are for owner-occupied residences.~~  
38    ~~For purposes of this subdivision, "owner-occupied" means that~~  
39    ~~the residence is the principal residence of the borrower.~~

1     (j) ~~This section shall remain in effect only until January 1, 2013,~~  
2     ~~and as of that date is repealed, unless a later enacted statute, that~~  
3     ~~is enacted before January 1, 2013, deletes or extends that date.~~

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